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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,546	07/27/2001	John H. Schneider	769-283	8553

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Pitney, Hardin, Kipp & Szuch LLP
711 Third Avenue
New York, NY 10017

EXAMINER

PICKETT, JOHN GREGORY

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 11/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/916,546

Applicant(s)

SCHNEIDER, JOHN H.

Examiner

Gregory Pickett

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Specification

2. The disclosure is objected to because of the following informalities: On page 1, under the paragraph heading Description of the Prior Art, line 6, the words "separate" and "a" appear to be transposed. On Page 3, under paragraph 1 of the Detailed Description of the Preferred Embodiment, line 10, applicant appears to have left out the noun --line-- after the adjective thinned.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitations "said second interlocking zipper profile" in lines 7-8 and "said first interlocking zipper profile" in line 8. There is insufficient antecedent basis for these limitations in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-6, 8, 10-11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malin et al. 6,115,892 in view of May 5,647,671.

Regarding claim 1, Malin et al. discloses a method for producing a tamper evident plastic bag comprising the steps claimed by the applicant. Malin et al. provides a zipper (Col. 2, In 35-38), positions said zipper on a web of bag making film with a second flange profile atop a first flange profile (Col. 3, In 9-11), secures the second flange profile distal portion to the web of bag making film (Col. 3, In 12-14, figure 4), and transports the web of bag making film to a form, fill and seal (FFS) machine (Col. 3, In 18-20).

Malin et al. further discloses a zipper structure with first zipper profile 16 and second zipper profile 18 that include mating interlocking members (figure1). In addition, Malin et al. discloses first flange 26 and second flange 28. Malin et al. teaches the placement of second flange 28 atop first flange 26 and the subsequent securing to web 34 in order to prevent the flaring of the top flange upon entry into the FFS machine. The examiner will refer to this as a ramp feature.

Malin does not disclose second flange 28 longer than first flange 26.

May discloses a zipper structure 80 (figures 5 and 6) with second flange 88 longer than first flange 86. May teaches that the use of one flange facilitates control of the strength of the seal by limiting the number of layers required to penetrate (Col. 8, In 52-58).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the zipper of Malin et al. with the flange structure of May in order to enhance the sealing control while maintaining the ramp feature necessary to overcome the stated flange flaring problem.

As to claims 2, and 10-11, Malin et al. further discloses the sealing of first flange 26 to web 34 and the proximal portion of second flange 28 to web 34 after the forming of web 34 into a tube (Col. 3, ln 30-34). As these seals are meant to remain intact when the bag is opened, they are considered a hard seal.

Regarding claims 3-4, 6, and 8, May teaches the use of a peel seal with a zipper to indicate to the consumer that the bag has been opened. Also, Malin et al. teaches the use of perforated line 32 on second flange 28 to indicate to the consumer that the bag has been opened. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply second flange 28 to web 34 with a peel seal as taught by May to indicate to the consumer when the bag has been opened. The examiner notes that a peel seal, a perforated line, and a scored line (said scored line and said perforated line being frangible) are functional equivalents when used as an indicator for the opening of a bag, and it would have been obvious to one of ordinary skill in the art at the time the invention was made to use any commonly used indicator to display to the consumer that the bag has been opened.

As to claim 5, Malin et al. discloses zipper 10 oriented in a direction transverse to machine direction of web 34 through an FFS (figure 3).

Regarding claim 13, bag 50 formed through the process of Malin et al. would be a structural equivalent of the bag as claimed by the applicant and is therefore anticipated by Malin et al.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malin et al. in view of May as applied to claims 1, 4, and 6 above, and further in view of Boeckmann et al. 5,023,122.

Malin et al. and May disclose a bag as previously set forth. Malin et al. and May do not disclose a frangible cap layer covering a perforated line.

Boeckmann et al. discloses a bag structure with frangible cap 23 located over perforated line 21. Boeckmann et al. teaches the use of frangible cap 23 to provide a seal over the perforated line until tearing occurs (Abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the bag structures taught by Malin et al. and May with the frangible cap of Boeckmann et al. in order to prevent contamination of the bag contents during storage.

6. Claims 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malin et al. in view of May as applied to claims 1 and 10-11 above, and further in view of Ausnit 6,131,369.

Malin et al. and May disclose a bag as previously set forth. Malin et al. and May do not disclose the further step of the installation of a slider onto the zipper.

Ausnit discloses the step of inserting a slider on to the zipper after the flanges are sealed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the additional step of inserting a slider as taught by Ausnit to

the bag forming method disclosed by Malin et al. and May in order to provide a convenient form of opening and closing the bag to the consumer. The examiner notes that sliders are common and conventional in the zippered bag art.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Matthews 6,151,868 further exemplifies the problem of leading flange interference. Mulder et al. 6,099,451 discloses another method for solving the leading flange problem. Johnson 6,251,209 discloses a wide range of zipper installation techniques. McMahon et al. 4,909,017 discloses an early version of the zipper mounted transversely on the web.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 703-305-8321. The examiner can normally be reached on Mon-Fri, 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-308-7769 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

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Art Unit: 3728

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Gregory Pickett
Examiner
October 25, 2002



Mickey Yu
Supervisory Patent Examiner
Group 3700